

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 296 of 2012

THURSDAY, this the 14th day of March, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. G. Divakaran Nair, Deputy Commissioner of Central Excise & Customs (Rtd.), Anjali House, Manacadu PO, Vengallur, Thodupuzha – 685 608.
2. Anto David, Deputy Commissioner of Central Excise & Customs (Rtd.), Thanal, Konthuruthy Road, Thevara, Cochin-682 013.
3. P.E. Mirza Waheed, Deputy Commissioner of Central Excise and Customs, (Rtd), 35/1265 A(1), Pudukkadu House, St. Martin Road, Palarivattom, Cochin-682 025.
4. C.C. John, Deputy Commissioner of Central Excise and Customs, (Rtd.), Chiramel House, S.H. Mount PO, Kottayam-686 006.
5. M.P. Nazir, Deputy Commissioner of Central Excise and Customs, (Rtd.), Nishama, Puthukudithazham, Kottuvally, Kozhikode – 673 016.
6. C.K. Sasidharan Nair, Deputy Commissioner of Central Excise and Customs, (Rtd.), Sreevilasam, Near Rotary Club, Piravam Road, Muvattupuzha – 686 661.
7. C.K. Thankappan, Deputy Commissioner of Customs, Wellington Island, Cochin – 682 009.
8. T.P. Ramachandran, Deputy Commissioner of Central Excise and Customs, (Rtd.), Sreesailam, Adiyath Lane, Poothole PO, Trichur.
9. K.P. Skariah, Deputy Commissioner of Central Excise and Customs, (Rtd.), H. No. 29/45, Kuzhiyanjal, Thekkumbhagom, Tripunithura, Ernakulam District.
10. C.K. Bhaskaran, Deputy Commissioner of Central Excise and Customs, (Rtd.), Bhasura, Pazhankavu, Nut Street, Vadakara, Kozhikode District.

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11. P.C. Mathew, Deputy Commissioner of Central Excise and Customs, (Rtd.), Polakandathil, Varanam PO, Cherthala – 688 555.
12. K.V. Jose, Deputy Commissioner of Central Excise and Customs, (Rtd.), H. No. 43/657, Kizhakkal, Salim Rajan Road, Kaloore PO, Cochin – 682 017.
13. E. Sukumaran, Deputy Commissioner of Central Excise and Customs, (Rtd.), Sougandhika, Near Pantalayani Siva Temple, Koyilandy, Kozhikode District – 673 305.
14. K.S. Sasidharan, Deputy Commissioner of Central Excise and Customs, (Rtd.), Kizhakke Illom, Durbar Hall Road, Cochin-682 016.
15. P. Satheesh Raju, Deputy Commissioner of Central Excise and Customs, (Rtd.), T.C. No. 29/97 (4), Vaishnavam, M.K.K. Nayar Road, Petta PO, Thiruvananthapuram – 695 024.
16. E.C. Prince, Deputy Commissioner of Central Excise and Customs, (Rtd.), Sylvan Heights, Chilavanur, Cochin-682 020.

..... Applicants

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary, Department of Revenue, North Block, New Delhi – 110 001.
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
4. Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
5. Commissioner of Customs (Preventive), Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
6. Commissioner of Central Excise & Customs, Central Excise Bhavan, Press Club Road, Trivandrum-695 001.
7. Commissioner of Central Excise & Customs,

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Central Revenue Buildings, Mananchira,
Kozhikode – 673 001.

8. Commissioner of Customs, Customs House,
Wellington Island, Cochin – 682 009.
 9. Pay and Accounts Officer, Central Excise,
Central Revenue Buildings, I.S. Press Road,
Cochin-682 018.
 10. Pay and Accounts Officer, Customs, Customs House,
Wellington Island, Cochin – 682 009.
 11. Pay and Accounts Officer, Central Excise,
Central Excise Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.
 12. Pay and Accounts Officer, Central Excise,
Central Revenue Buildings, Mananchira,
Kozhikode – 673 001.
- Respondents

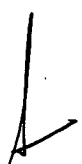
(By Advocate – Mr. Millu Dandapani, ACGSC)

This application having been heard on 28.02.2013, the Tribunal on
14-03-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicants joined service as Inspectors of Central Excise/Preventive Officers of Customs. They were promoted as Superintendents of Central Excise/Superintendents of Customs (Group-B) and later as Assistant Commissioner of Customs and Central Excise (Group-A) in the year 2002. They were entitled for promotion as Deputy Commissioner during the year 2006 on completion of four years of service as Assistant Commissioner. As per Annexure A6 order dated 19.11.2010 they were granted promotion with effect from the date on which they have completed four years of service. The 11th applicant was promoted as Deputy Commissioner with effect from 1.10.2006 and all other applicants with effect



from 10.12.2006. In the orders of promotion as Deputy Commissioner it is specifically stated that promotion is notional and on adhoc basis. Accordingly, as per Annexure A30 the 5th applicant was entitled for fixation benefits from 10.12.2006 and arrears from the date of assumption of charge as Deputy Commissioner i.e. 1.7.2009. As per Annexure A31 in respect of applicant No. 15 his pay and allowance with effect from 10.12.2006 have been wrongly drawn and the excess amount drawn and paid to him from 10.12.2006 to 30.6.2009 is to be recovered from DCRG payable to him. Aggrieved the applicants have filed this OA for the following reliefs:-

“(i) To call for the records leading to the issue of Annexure A30 and Annexure A31 and quash the same.

(ii) To declare that the applicants are entitled for fixation of pay under FR 22(1)(a)(i) and consequential monetary benefits with effect from the date of their notional promotion as Deputy Commissioners from the post of Assistant Commissioners.

(iii) To direct the respondents to grant all consequential monetary benefits to the applicants w.e.f. from the date of their notional promotion as Deputy Commissioners, draw and disburse the arrears with interest @ 12% per annum with in a stipulated period.

(iv) To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.

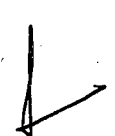
And

(v) To award the cost of this proceedings.”

2. The applicants contended that the promotion of Assistant Commissioner in the junior time scale to the post of Deputy Commissioner in the senior time scale is a time bound promotion and the incumbent is entitled for fixation of pay under FR 22(1)(a)(i) as there are no difference in the powers and functions of Assistant Commissioner and Deputy Commissioner.



The promoted officer is entitled for monetary benefits from the date of notional promotion. Monetary benefits from the date of notional promotion is granted in Directorate of Revenue Intelligence and Directorate General of Central Excise Intelligence and in other zones. On completion of four years of service in the junior time scale one is entitled for promotion to senior time scale with all consequential monetary benefits. Under the MACP scheme officers are eligible for arrears of pay with effect from the date on which they complete the stipulated years of service. Hence, the denial of monetary benefits from the date of notional promotion to the applicants is highly discriminatory, illegal and arbitrary. Nothing prevented the respondents from preparing the list of fit JTS officers well before 10.12.2006 and to promote them including the applicants with effect from 10.12.2006 in time. The delay in issuing the time bound grade promotions was not on account of the fault of the applicants and hence they should not be deprived of the legitimate benefits on the plea that promotion was notional. The fact that the Assistant Commissioner and the Deputy Commissioner have the same duties, functions and powers is admitted by the respondents. In OA No. 300 of 2007, the Madras Bench of this Tribunal directed the promotion of the applicant therein to the senior time scale with effect from 1.10.2006. The principle of no work no pay enunciated in the Apex Court judgments in Shri Paluru Ramakrishnaiah Vs. Union of India -1989 SCR (2) 92, is not applicable in the case of the applicants as they have done the work of the Deputy Commissioner from the relevant date. The powers and functions of Additional Commissioner Grade-III are much higher than that of the Joint Commissioner Grade-IV. Yet when certain officers were given promotion as




Additional Commissioner with retrospective effect arrears of pay and allowances were drawn and paid to them with effect from the date of notional promotion as Additional Commissioner. The applicants rely on the decision of the Hon'ble High Court of Kerala in *Sucheendran Vs. State of Kerala* in WA No. 2905 of 2002 decided on 31.5.2005 and reported in 2005 (3) KLT 499.

3. The respondents in their reply statement submitted that the promotions effected vide order dated 19.11.2010 were only notional with effect from the date indicated against the names of each officer as specified in the order. Hence, the benefit of higher pay and allowances was given only from the date of assuming the charge as Deputy Commissioner. As the promotions were purely adhoc and notional with effect from the date in the past the provisions of Rule FR 22(1)(a)(i) do not apply in the instant case. No arrears have been paid in the Bangalore Commissionerate in such cases. Further in respect of other formations no information is so far available. The principle of no work and no pay would apply to promotion granted with retrospective effect as per Hon'ble Supreme Court judgment in the case of *Shri Paluru Ramakrishnaiah Vs. Union of India*.

4. We have heard the learned counsel for the parties and perused the records.

5. As per Rule 19 of the Indian Customs and Central Excise Service Group-A Recruitment Rules, 1987 the applicants are entitled to be considered for regular promotion to Grade-V in the running order of their



seniority and after completing four years regular service in the grade-VI. The applicants were eligible to be considered for promotion in the year 2006. They were promoted only in the year 2010 and monetary benefits are granted to them on the date of assumption of charge as Deputy Commissioner. The principle of no work no pay is not applicable in the instant case as there is no assumption of higher duties and responsibilities on assuming the charge of Deputy Commissioner. The respondents have admitted that the powers, functions and responsibilities of the Assistant Commissioner and the Deputy Commissioner are one and the same. In Annexure A48 order it is clearly stated that there is no change in the powers, functions on account of re-designation. The promotion of Assistant Commissioner as Deputy Commissioner in effect is a financial upgradation without involving assumption of higher responsibilities and duties. The Deputy Commissioner has no higher work than that of the Assistant Commissioner. Therefore, the principle of no work no pay as claimed by the respondents is not applicable in the instant case.

6. The order of promotion dated 30.6.2009 at Annexure A4 states that the date of effect of these promotions in respect of the individual officers shall be subject to the outcome of connected litigation on the subject. The seniority of the officers which is under litigation is getting finalized shortly as stated by the respondents during hearing. In the light of the non determination of the effective date of promotion the respondents were not justified in issuing Annexure A30 and A31 orders fixing the effective date of promotion as the date of assumption of charge as Deputy Commissioner on

1.7.2009 as they foreclose the issue of date of effect arbitrarily. Hence, the impugned orders are vitiated and liable to be set aside.

7. The applicants have cited a number of cases where arrears of pay and allowances have been paid to officers from the date of their notional promotion to higher post which are not refuted by the respondents. If so it is discriminatory on the part of the respondents not to pay the applicants the pay and allowances from the date they were due for promotion as Deputy Commissioner.

8. The Hon'ble High Court of Kerala in *Succheendran Vs. State of Kerala* in WA No. 2905 of 2002 decided on 31.5.2005 and reported in 2005 (3) KLT 499 has held as under:-

“Promotion which do not involve a change of duties should be given effect from the date on which the vacancy arose. Here, there is no change of duties. It is only promotional aspect with a change of salary alone and for no fault of petitioner, he was denied promotion at the particular date. Therefore, the petitioners will be entitled to the difference in salary in the promoted post for the period from 11.9.1989 to 11.7.1995 from which date he was retrospectively promoted. The arrears of the same should be paid to him within 3 months from the date of receipt of copy of this judgment.”

9. In the light of the above discussion we are of the considered view that the applicants are eligible for pay and allowances from the date of their notional promotion as Deputy Commissioner. Accordingly, Annexures A30 and A31 orders are quashed. The respondents are directed to fix the pay of the applicants under FR 22(1)(a)(i) with effect from the date of their notional promotion as Deputy Commissioner, from the post of Assistant Commissioner and pay all consequential and monetary benefits with effect



from the date of their notional promotion and to draw and disburse arrears within a period of two months from the date of receipt of a copy of this order.

10. Original Application is allowed as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P(C) NO. 78 OF 2013 IN O.A. NO. 296 OF 2012

Tuesday, this the 11th day of March, 2014

CORAM:

**HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Ms.MINNIE MATHEW, ADMINISTRATIVE MEMBER**

K.V.Jose
Deputy Commissioner of Central Excise & Customs (retd)
H.No.43/657, Kizhakkal
Salim Rajan Road
Kaloor PO, Cochin – 682 017

... Petitioner

(By Advocate Mr.CSG Nair)

versus

1. Shri Sumit Bose
Secretary
Department of Revenue
North Block, New Delhi – 110 001

2. Smt.Praveen Mahajan
Chairman
Central Board of Excise & Customs
North Block, New Delhi – 110 001

... Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC
Advocate Mr.Millu Dandapani, ACGSC)

The application having been heard on 11.03.2014, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

When this Contempt Petition (Civil) is taken up for consideration, it is submitted on behalf of the respondents that the directions issued by this Tribunal in the above Original Application have been complied with and all the arrears payable to the applicants in the above case including the petitioner herein have been disbursed to them. The order issued in this regard by the Department of Revenue, Ministry of Finance on February 25, 2014 has been produced along with the affidavit filed by the Commissioner of Central Excise, Customs & Service Tax, Cochin on behalf of the



respondents. Through this affidavit he has tendered unconditional apology for the delay in implementation of the order.

2. Learned counsel for the petitioner submits that in view of the order passed by the Department granting the benefits as ordered by this Tribunal, petitioner does not have any further grievance in the matter. The above submission is recorded.

3. Respondent No.3 who was directed to appear today has filed an affidavit seeking exemption from personal appearance for the day "due to some personal reasons". He has also tendered unconditional apology. In the peculiar facts and circumstance of the case, the prayer made by Respondent No.3 is allowed.

4. The Contempt Petition (Civil) is **closed**.

Dated, the 11th March, 2014


MINNE MATHEW
ADMINISTRATIVE MEMBER


JUSTICE A.K. BASHEER
JUDICIAL MEMBER

VS